

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1648 - SB 2597

February 6, 2022

SUMMARY OF BILL: Authorizes a local education agency (LEA) or public charter school to enroll, or refuse to enroll, a student who is unlawfully present in the United States. Requires the Department of Education (DOE) to withhold funding from each LEA that chooses to enroll a student who is unlawfully present in the United States. Prohibits DOE from counting a student who is unlawfully present in the United States as part of the basic education program (BEP) calculations for an LEA. Establishes certain reporting requirements for LEAs and public charter schools.

FISCAL IMPACT:

Other Fiscal Impact – A decrease in BEP funds to any LEA who is educating students prohibited from receiving funds in the proposed legislation. However, the extent and timing of any decrease in BEP funding to any LEA is unknown and cannot be reasonably determined.

An unknown increase in state and local expenditures incurred providing educational resources to students who can longer be included in BEP funding calculations at state funded schools and LEAs.

The proposed legislation may jeopardize up to \$5,385,248,493 in federal funding for noncompliance with federal law.

Assumptions:

- The proposed legislation states that if an LEA or public charter school enrolls a student who is unlawfully present in the United States, DOE shall withhold from the LEA or public charter school, for each such student, an amount representing the per-pupil state funds generated through the BEP for the LEA in which the student resides.
- The proposed legislation also prohibits DOE from counting a student who is unlawfully present in the United States as part of the BEP calculations for an LEA.
- The U.S. Supreme Court has affirmed that citizenship or immigration status of students, parents, or guardians cannot be used to bar students from public schools (*Plyler v. Doe*, 1982).
- Title VI of the Civil Rights Act of 1964 prohibits discrimination against a student on the basis of the student's immigration or citizenship status.

- Tennessee State Board of Education (SBE) rule 0520-01-19-.02 prohibits LEAs from denying enrollment to a student on the basis of the student's or their parents' or guardians' actual or perceived citizenship or immigration status.
- DOE and each LEA must sign assurances that they will comply with federal civil rights laws as a condition to receive federal funds.
- It is unknown how many students reside in Tennessee unlawfully; neither the state nor LEAs currently collect data on the immigration and citizenship status of students.
- These students may still be enrolled in public schools but BEP funding will not be allowed to be used as part of their funding; therefore, there will be a decrease in BEP funding to LEAs and charter schools. The timing and extent of any decrease cannot reasonably be determined.
- Further, additional state and local funds will have to be allocated for educational expenses incurred by these students at state funded schools and LEAs resulting in an increase in both state and local expenditures. The extent and timing of any increase cannot reasonably be determined.
- In FY21-22, Tennessee received \$1,209,826,059 in federal awards, and to date, has received \$4,175,422,434 in federal relief funding (including Elementary and Secondary School Emergency Relief Fund (ESSER), Governor's Emergency Education Relief Fund (GEER), and Emergency Assistance to Non-Public Schools (EANS)).
- If DOE is found to be in violation of federal civil rights laws, up to \$5,385,248,493 in federal funding (\$1,209,826,059 federal awards + \$4,175,422,434 federal relief funding) could be jeopardized.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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